

The Honorable Barbara J. Rothstein

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

VIRGILIJUS CINCYS, an individual,

Plaintiff,

v.

ALLSTATE FIRE AND CASUALTY  
INSURANCE COMPANY, a foreign  
insurance company, licensed to do, and doing  
business in the State of Washington,

Defendant.

No. 2:23-cv-01914-BJR

**STIPULATION AND ORDER RE:  
PHYSICAL EXAMINATION OF  
PLAINTIFF VIRGILIJUS CINCYS**

**I. STIPULATION**

**COMES NOW**, Plaintiff Virgilijus Cincys (“Plaintiff”) and Defendant Allstate Fire & Casualty Insurance Company (“Allstate”), and hereby agree and stipulate that Plaintiff shall submit to a physical examination with the following manner, conditions, and scope under Federal Rules of Civil Procedure Rule 35:

**Physical Examination**

1. The date and time for the **physical examination** will be **March 11, 2024, at 12:30 p.m. Pacific Time.**

- 1           2. The physical examination will be performed by Dr. James Harris, MD. Attached to  
2           this Stipulation as “**Exhibit A**” is a true and correct copy of Dr. Harris’s Curriculum  
3           Vitae setting forth his qualifications and background as well as a copy of his fee  
4           schedule.
- 5           3. The location of the examination will be **1138 Poplar Place South, Seattle, WA,**  
6           **98144.**
- 7           4. The manner for the physical examination will be a two-part examination consisting  
8           of:
- 9               a. An interview in the medical examiner’s office, consisting of a history of  
10              Plaintiff’s injury(s) and treatment for her injury(s);
- 11                     i. The Examiner(s) may ask the Plaintiff questions about the  
12                     mechanisms of injuries, current complaints, symptoms, and  
13                     communication necessary to conduct the Examination(s).
- 14                     ii. The Examiner(s) may review the deposition transcript of the  
15                     Plaintiff, if available, as well as medical records for further  
16                     information.
- 17               b. A physical examination of Plaintiff;
- 18                     i. The Examination will not include any diagnostic test or procedure  
19                     that is painful, protracted, or intrusive.
- 20                     ii. No person other than the Examiner(s) and his/her administrative staff  
21                     shall participate in any way in the examination or in the evaluation or  
22                     diagnosis of Plaintiff.
- 23

1                   iii. Dr. Harris will perform an examination consistent with his area of  
2                   expertise (i.e., Orthopedic).

3           5. The conditions and scope of the physical examination will be a two-part  
4           examination, consisting of an interview and physical examination, with a total  
5           duration of no longer than three (3) hours.

6               a. Plaintiff shall have the right to have a representative person present at the  
7               examination provided they shall not interfere with nor obstruct the  
8               examination.

9               b. Plaintiff shall have the right to make an audio and/or video recording of the  
10              examination, which shall be made in an unobtrusive manner and at the  
11              expense of Plaintiff. If Plaintiff elects to make such recording, a true and  
12              correct copy of the audio and/or video recording must be provided to defense  
13              counsel within seven (7) days of the Examination. All recording will further  
14              be required to be done on a fixed tripod.

15          6. The Examiner(s) shall make a written report of the examination, setting out all the  
16          Examiner's findings, including results of all tests made, and all diagnosis and  
17          conclusions. Counsel for Defendant shall cause a copy of the report to be delivered  
18          to Counsel for Plaintiff within forty-five days (45) of the examination, unless there  
19          is good cause shown for any delay. However, Defendant retains the right to prevent  
20          the depositions of the Examiner(s) or use of the Examiner's report, should the  
21          Examiner(s) be made consulting expert(s) in this matter. *Mothershead v. Adams*, 32  
22          Wn. App. 325, 647 P.2d 525 (1982).

1 7. After the delivery of the Examiner(s) report, Plaintiff's Counsel shall have the right  
2 to take the discovery deposition of the Examiner(s), unless Defendant's attorneys  
3 decide not to call the Examiner(s) as a witness at trial, said determination to be  
4 made and written notice provided to Plaintiff's attorneys pursuant to the case  
5 scheduling order. The Examiner(s) shall make themselves available for deposition  
6 no later than sixty (60) days prior to trial or, if a discovery deadline is set by the  
7 Court, no later than thirty (30) days prior to that deadline, or as agreed to by the  
8 Parties.

9 8. If the Examiner(s) is deposed by Plaintiff's attorney, Plaintiff will not be  
10 responsible for Examiner's preparation time.

11 9. Fees to be charged by the Examiner(s) to the Plaintiff's attorneys for time spent at  
12 the deposition shall be per the fee schedule. The fee schedule for the Examiner is  
13 included herewith. If the fees are reduced by the court, defense counsel will pay the  
14 difference.

15 10. A copy of this Stipulation shall be given to the Examiner(s) before the examination.

16 11. Should any dispute arise during the examination regarding the terms and conditions  
17 of the examination, the Examiner(s) agrees to contact the undersigned attorneys  
18 promptly so that they can attempt to work out a solution to any perceived problem.

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1 DATED this 23rd day of February 2024.

2 **WATHEN | LEID | HALL | RIDER, P.C.**

3 s/ Rory W. Leid

4 Rory W. Leid, III, WSBA #25075

5 s/ Dylan R. Knapp

6 Dylan R. Knapp, WSBA #58394

7 *Attorneys for Defendant*

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9 DATED this 23rd day of February 2024.

10 **DRIGGS, BILLS, & Day PLLC**

11 s/ Stefanie Collins (Via email approval 2/22/24)

12 Stefanie Collins, WSBA #23080

13 *Attorney for Plaintiffs*

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**II. ORDER**

Pursuant to Plaintiff Virgilijus Cincys and Defendant Allstate's Stipulation, and for good cause shown, the above Stipulation is accepted, adopted and made the Order of the Court.

Dated: February 28, 2024.



Barbara Jacobs Rothstein  
U.S. District Court Judge

*Presented by:*

**WATHEN | LEID | HALL | RIDER, P.C.**

s/ Rory W. Leid, III

Rory W. Leid, III, WSBA #25075

s/ Dylan R. Knapp

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*Approved by:*

**DRIGGS, BILLS, & Day PLLC**

s/ Stefanie Collins (Via email approval 2/22/24)

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